



**State of Wisconsin • DEPARTMENT OF REVENUE**

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WI 53708-8933  
(608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>



**Tommy G. Thompson**  
Governor

**Cate Zeuske**  
Secretary of Revenue

January 12, 1999

Honorable Judy Robson  
Co-Chair, Joint Committee for Review  
of Administrative Rules  
Room 15 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882


Honorable Glenn Grothman  
Co-Chair, Joint Committee for Review  
of Administrative Rules  
Room 15 North, State Capitol  
P.O. Box 8952  
Madison, WI 53708

Re: Clearinghouse Rule 98-184

Dear Senator Robson and Representative Grothman:

Copies of Clearinghouse Rule 98-184 in final draft form and the Report to the presiding officers of the State Senate and Assembly required under s. 227.19(2) and (3), Stats., are enclosed.

Sincerely,

  
Cate Zeuske  
Secretary of Revenue

CZ:MPW:cli  
i:/rules/239 Committees - JCRAR

Enclosure

**DEPARTMENT OF REVENUE**  
**CLEARINGHOUSE RULE NUMBER 98-184**  
**SECTION 227.19(2) AND (3), STATS., REPORT**

**Need For Proposed Rule**

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment method, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25(14), Stats.

**Public Hearing**

A public hearing was held on December 28, 1998. Nobody appeared at the hearing, to offer testimony.

**Legislative Council Staff Recommendations**

All recommendations of the Legislative Council staff have been incorporated into the proposed order.

**Regulatory Flexibility Analysis**

The proposed rule order does not have a significant economic impact on a substantial number of small businesses.

**PROPOSED ORDER OF THE DEPARTMENT OF REVENUE  
AMENDING AND CREATING RULES**

The Wisconsin Department of Revenue hereby proposes an order to: amend Tax 2.39(3)(a)(intro.); and create Tax 2.395, relating to the use of an alternative apportionment method.

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**Analysis by the Department of Revenue**

Statutory authority: s. 71.80(1)(c), Stats., and s. 71.25(14)(b), Stats., as created by 1997 Wis. Act 299

Statutes interpreted: s. 71.25(14), Stats.

SECTION 1. Tax 2.39(3)(a)(intro.) is amended, to exclude corporations that qualify for the use of an alternative apportionment method from the rule relating to the general apportionment method.

A second note at the end of Tax 2.39(3) is created, to include a reference to Tax 2.395.

SECTION 2. Tax 2.395 is created, to address the use of an alternative apportionment method. This alternative was created by s. 2r, 1997 Wis. Act 299, effective for taxable years beginning on January 1, 1998.

---

SECTION 1. Tax 2.39(3)(a)(intro.) is amended to read:

Tax 2.39(3)(a)(intro.) For the reporting of income for the purposes of franchise or income taxation, all businesses except financial organizations and public utilities as defined in ss. 71.04(8) and 71.25(10), Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25(14), Stats., shall use an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. Property, payroll or sales related to the production of nonapportionable income described in s. 71.04(1) and (4) or 71.25(5)(b), Stats., may not be included in either the numerator or the denominator of any of the apportionment factors. If one of these factors is omitted pursuant to s. 71.04(10) or 71.25(11), Stats., the percentages of the fraction represented by the remaining factors shall be

adjusted as follows:

**Note to Revisor:** Insert the following note after the first note at the end of Tax 2.39(3):

**Note:** See s. Tax 2.395 for an alternative method of apportioning the income of certain corporations.

SECTION 2. Tax 2.395 is created to read:

**Tax 2.395 Alternative method of apportionment.** (1) DEFINITIONS. In this section:

(a) "Corporate restructuring" means the transfer by a corporation of part or all of its property and employees to one or more subsidiaries in exchange for 100% of the subsidiary's stock.

(b) "Corporation" means a corporation for profit that is incorporated under ch. 180, Stats., or under the law of another state, the District of Columbia or a foreign country and is subject to tax under s. 71.23(1) or (2), Stats.

(c) "Subsidiary" means a corporation that files an application under this section with a corporation that directly or indirectly owns 100 % of the total value or share of all classes of its stock outstanding.

(d) "Unfair representation of the degree of business activity in this state" means that the sum of the Wisconsin tax liability of the corporation and its subsidiaries calculated under s. 71.25(6), Stats., exceeds 200% of the Wisconsin tax liability that the corporation would have owed if corporate restructuring had not occurred and results in at least \$2 million of additional Wisconsin tax liability.

**Note:** This definition applies only for purposes of s. 71.25(14), Stats.

(e) "Wisconsin tax liability" means the gross tax computed under s. 71.23(1) or (2), Stats.

(2) WHO MAY FILE AN APPLICATION. A corporation together with its subsidiary may

file an application on or before January 1, 2000 to use an alternative method of apportionment under this section if all of the following conditions are met:

(a) The corporation is not a financial organization as defined in s. 71.25(10)(a), Stats., a public utility as defined in s. 71.25(10)(b), Stats., or a tax-option corporation as defined in s. 71.34(2), Stats.

(b) The corporation is a party to a corporate restructuring that occurs after June 30, 1998 and before January 1, 2000.

(c) The corporation retains direct or indirect ownership of 100% of the subsidiary's stock and the subsidiary has not been engaged in business in or outside this state since the date of its incorporation.

(d) As a result of the corporate restructuring, the use of the allocation and separate accounting method or the apportionment method prescribed under s. 71.25(6), Stats., would result in an unfair representation of the degree of business activity in this state, given the same level of sales, payroll and property for the corporation and its subsidiaries.

(3) CONTENT OF THE APPLICATION. The application shall set forth a complete statement of the facts and reasons relating to the request to use an alternative method of apportioning income to Wisconsin, including the following:

(a) The full name, address and federal employer identification number of the corporation applying for the change in apportionment method.

(b) The full name, address and federal employer identification number of the subsidiaries that are a party to the corporate restructuring. If this information is not available when the application is filed, it shall be provided to the department as an amendment to the application at least 60 days before a return using an alternative apportionment method is filed.

(c) The corporation's and the subsidiaries' taxable year. The subsidiaries shall have the

same taxable year as the corporation.

(d) The taxable year for which the corporation wishes the change to become effective.

(e) A detailed description of the corporate structure and business operations before the corporate restructuring.

(f) A detailed description of the corporate structure and business operations after the corporate restructuring.

(g) The present allocation or apportionment method used in Wisconsin.

(h) A description of the alternative apportionment method requested.

(i) A complete and precise statement of the reasons for the modification requested, including why the present method does not fairly represent the activities of the corporation and its subsidiaries in Wisconsin.

(j) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the present method of allocation or apportionment would result in an unfair representation of the degree of business activity in this state.

(k) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the proposed alternative method of apportionment does not result in less Wisconsin franchise or income tax than the corporation would be liable for without restructuring.

(L) Any other information relevant to the application the department requires or the corporation believes may have a bearing on the department's decision about whether to grant the apportionment method requested.

(m) Whether the corporation is being audited by the department at the time of the application.

**Note:** The application shall be mailed to the following address: Administrator of the Division of Income, Sales and Excise Taxes, Wisconsin Department of Revenue, P.O. Box 8933, Madison, WI 53708-8933.

(4) ALTERNATIVE METHODS OF APPORTIONMENT. The department may authorize any one or a combination of the following alternative methods of apportionment:

(a) Excluding any one or more of the property, payroll and sales factors.

(b) Weighting the factors other than 50% sales, 25% property and 25% payroll.

(c) Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. For purposes of this paragraph:

1. A sale is allocated to the location where the customer receives the benefit of the service.

2. If the customer receives the benefit of the service in more than one state, the gross receipts are includable in the numerator of the apportionment factor in proportion to the extent the recipient receives the benefit of the service in each state.

(d) Including one or more additional factors which will fairly represent the corporation's or the subsidiaries' business activity in this state.

(e) Allowing one method for apportioning the business income of the corporation and another method for apportioning the business income of a subsidiary.

(f) Allowing the corporation and one or more subsidiaries to compute their Wisconsin tax liability by adding together their apportionable income and apportionment factors, eliminating any intercompany transactions, computing the Wisconsin tax liability as though the group were one taxpayer and dividing the combined Wisconsin tax liability among the corporations based on their share of the group's Wisconsin business income.

(g) Allowing any other apportionment method that will fairly represent the corporation's and the subsidiaries' business activity in this state.

(5) REVIEW OF THE APPLICATION. The department shall review the information submitted and follow the procedure specified in s. 71.25(14)(c), Stats., before issuing a written decision regarding the use of an alternative method of apportionment. The corporation shall receive written approval before using the alternative method.

(6) YEARS FOR WHICH USE OF ALTERNATIVE METHOD OF APPORTIONMENT APPLIES. (a) Except as provided in par. (b), once an alternative method of apportionment has been approved for a taxable year, the corporation shall use it for that taxable year and all subsequent taxable years, unless the department finds the use of the alternative apportionment method is no longer appropriate as determined under sub. (7)(b).

(b) Notwithstanding par. (a), the aggregate of the corporation's and the subsidiaries' Wisconsin tax liability shall be the greater of the Wisconsin tax liability calculated using the approved alternative apportionment or the Wisconsin tax liability calculated as if the corporate restructuring had not taken place.

(7) REVOCATION OF USE OF ALTERNATIVE METHOD OF APPORTIONMENT.

(a) 1. If the department upon audit or review finds that the use of the apportionment method prescribed in s. 71.25(6), Stats., does not result in an unfair representation of the degree of business activity in this state for the first taxable year for which an alternative method of apportionment was approved, the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25(6), Stats.

2. If the department upon audit or review finds that the use of the alternative apportionment method in subsequent taxable years is no longer appropriate as determined under par. (b), the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities



under s. 71.25(6), Stats., for each of the subsequent taxable years.

(b) In determining whether a corporation may continue to use the alternative method of apportionment, the department shall look for a continued substantial amount of difference between the tax liability calculated pursuant to s. 71.25(6), Stats., and the tax liability had the restructuring not taken place. The department shall also consider any additional information the corporation has submitted pursuant to sub. (8).

(c) If the department finds for a period of at least three consecutive taxable years that a substantial difference in tax liability as determined in par. (b) no longer exists, the corporation may no longer use the approved alternative apportionment method.

(d) If the department terminates the approved alternative apportionment method, in a subsequent taxable year the corporation may request a new alternative method of apportionment. The department shall submit the new proposed alternative method of apportionment to the co-chairpersons of the joint committee for review of administrative rules pursuant to s. 71.25(14)(c), Stats.

(8) FILING OF RETURN. For each taxable year, the corporation and its subsidiaries shall file with their Wisconsin corporate franchise or income tax returns schedules setting forth the calculations required under sub.(6), as well as a calculation of the tax liability of the corporation and its subsidiaries under s. 71.25(6), Stats. The corporation and its subsidiaries shall attach a copy of the department's approval to use an alternative apportionment method to the front of each return filed. The corporation may also include additional explanatory material relative to its business activity. The returns shall be filed with the department's audit bureau.

**Note:** The address for mailing the returns is: Audit Bureau, Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708-8906.

(9) CONFIDENTIALITY. All documents related to a request for an alternative method of

apportionment shall be subject to the confidentiality provisions of s. 71.78, Stats.

**Note:** Section Tax 2.395 interprets s. 71.25(14), Stats.

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The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

**Initial Regulatory Flexibility Analysis**

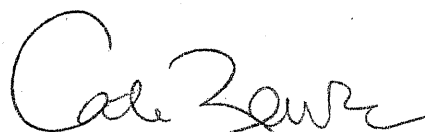
This proposed rule order does not have a significant economic impact on a substantial number of small businesses.

DEPARTMENT OF REVENUE

Dated: \_\_\_\_\_

Nov 30, 98

By: \_\_\_\_\_



Cate Zeuske  
Secretary of Revenue

i.rules1239 Proposed Order

## 1997 Session

LRB or Bill No./Adm. Rule No.

TAX 2.39 and 2.395

Amendment No. if Applicable

**FISCAL ESTIMATE  
DOA-2048 N(R10/94)**☒ ORIGINAL  
☐ CORRECTED☐ UPDATED  
☐ SUPPLEMENTAL**Subject**

Alternative Apportionment Method

**Fiscal Effect****Unknown**State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

☐ Increase Existing Appropriation  
☐ Decrease Existing Appropriation  
☐ Create New Appropriation☐ Increase Existing Revenues  
☐ Decrease Existing Revenues☐ Increase Costs - May be Possible to Absorb  
Within Agency's Budget ☐ Yes ☐ No☐ Decrease CostsLocal: ☐ No Local Government Costs1. ☐ Increase Costs  
☐ Permissive ☐ Mandatory2. ☐ Decrease Costs  
☐ Permissive ☐ Mandatory3. ☐ Increase Revenues  
☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues  
☐ Permissive ☐ Mandatory**5. Types of Local Governmental Units Affected:**☐ Towns ☐ Villages ☐ Cities  
☐ Counties ☐ Others \_\_\_\_\_☐ School Districts ☐ WTCS Districts**Fund Sources Affected**☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S**Affected Ch. 20 Appropriations****Assumptions Used in Arriving at Fiscal Estimate**

Under provisions of 1997 Wisconsin Act 299, corporations may request, and the Department may approve, an alternative method of apportionment of income in the event of a corporate restructuring that would result in unfair representation of the degree of business activity in the state. The alternative method may not result in less franchise or income tax revenue to the state than the current corporate structure is liable for, given the same overall level of sales, payroll and property.

Before granting a request for alternative apportionment, Act 299 requires the Department to promulgate rules specifying the circumstances in which alternative apportionment may be granted and the kinds of alternatives that may be authorized. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998, and corporations must request use of an alternative method on or before January 1, 2000.

**Alternative Apportionment of Income**

The rule specifies that certain corporations that are party to a restructuring that results in an unfair representation of business activity in the state may apply for an alternative apportionment method and specifies the required content of the application.

(continued on page two)

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name &amp; Phone No.)

Wisconsin Department of Revenue

Pamela Walgren, (608) 266-7817

Authorized Signature/Telephone No.

Yeang-Eng Braun

(608) 266-2700

Date

11/12/98

The rule defines an unfair representation of business activity as combined net tax liability of the parent and subsidiaries that exceeds 200% of the net tax liability the parent corporation would have computed if it had not contributed business operations to the subsidiaries and that results in at least \$2 million of additional tax liability. Calculations are based on data from the most recently filed tax return prior to July 1, 1998.

Under the rule, the Department may authorize the following alternative methods of apportionment:

1. Excluding one or more of the property, payroll or sales factors.
2. Weighting the factors differently (generally factors are weighted as 50% sales, 25% payroll and 25% property).
3. Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. Sales are allocated to the location where the customer receives the benefit of the service; multi-state benefit is allocated proportionately to each state.
4. Including one or more additional factors.
5. Allowing different methods of apportionment for the parent and subsidiaries corporations.
6. Allowing a parent and subsidiary corporations to compute net tax liability as though the group were one taxpayer by adding apportionable income and factors and eliminating intercompany transactions.
7. Allowing any other apportionment method that will fairly represent business activity in the state.

The rule specifies that the aggregate of the corporations' and the subsidiaries' Wisconsin tax liability is the greater of the Wisconsin tax liability calculated using the alternative apportionment method or the tax liability calculated using the standard apportionment method as if the corporate restructuring had not occurred. These calculations and the calculations using the standard method of apportionment after corporate restructuring must be filed for each taxable year with the returns of the corporation and subsidiaries to the Department's Audit Bureau. This last calculation measures the change in tax revenues attributable to the provision.

Once granted, the alternative apportionment method continues in subsequent years until revoked. If upon audit or review the Department finds that the use of the standard apportionment method no longer results in unfair representation of the degree of business activity in the state, the corporation and subsidiaries must recalculate their Wisconsin tax liabilities for each year the alternative method was used and unfair representation did not exist.

Once the alternative method is granted, unfair representation of business activity continues to exist if there is a substantial amount of difference between the tax liability calculated under the standard apportionment method and the tax liability had the restructuring not occurred. If a substantial difference in tax liability does not exist for three consecutive years, the corporation may no longer use the alternative apportionment method.

If the Department terminates the alternative method, the corporation may request and the Department will resubmit the proposed alternative method to the co-chairpersons of the joint committee for review of administrative rules.

YCB  
11/12/98

### **Fiscal Effect**

Since the determination to grant an alternative apportionment method is based on projections of income of restructured corporations, the Department does not have actual data to estimate the fiscal effect of this provision. Because a change in a corporation's apportionment ratio could either raise or lower its tax, the fiscal effect could be positive or negative in any given year. Discussions with other states that have similar provisions indicate that corporations seek changes in apportionment ratio in limited instances, which implies a small fiscal effect. However, apportionment ratio changes can have a substantial effect on a corporation's tax liability, so that the change in any year could be significant.

YEB  
11/12/98

1997 Session

**FISCAL ESTIMATE WORKSHEET**  
Detailed Estimate of Annual Fiscal Effect  
DOA-2047(R10/94)

☒ ORIGINAL    ☐ UPDATED  
☐ CORRECTED    ☐ SUPPLEMENTAL

LRB OR Bill No. Adm. Rule No.

Amendment No.

TAX 2.39 and 2.395

**Subject**

Alternative Apportionment Method

**I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category		Increased Costs	Decreased Costs
State Operations - Salaries and Fringe		\$	\$ -
(FTE Position Changes)		( FTE)	( FTE)
State Operations-Other Costs			-
Local Assistance			-
Aids to Individuals or Organizations			-
TOTAL State Costs by Category		\$	\$ -
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED		\$	-
PRO/PRS		\$	-
SEG/SEG-S			-
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-

SENATOR JUDITH B. ROBSON  
CO-CHAIR  
PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR  
PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

**JOINT COMMITTEE FOR  
REVIEW OF ADMINISTRATIVE RULES**

***Emergency Rule Extension Motion Form***

*Last Modified March, 1999*

**Date:** January 28, 1999

**Location:** Wisconsin State Capitol, GAR Room 417N

Moved by *Redner*, Seconded by *Grothman*

**THAT**, pursuant to §227.24(2)(a), *Stats.*, the Joint Committee for Review of Administrative Rules extend the effective date of **Tax 2.39 & 2.395** by 60 days, at the request of the Department of Revenue.

COMMITTEE MEMBER	Aye	No	Absent
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SENATOR JUDITH B. ROBSON  
CO-CHAIR

PO BOX 7882  
MADISON, WI 53707-7882  
(608) 266-2253



REPRESENTATIVE GLENN GROTHMAN  
CO-CHAIR

PO BOX 8952  
MADISON, WI 53708-8952  
(608) 264-8486

## JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES

February 19, 1999

Secretary Cate Zeuske  
125 South Webster Street  
Floor 2  
Madison, WI 53702

Dear Secretary Zeuske:

We are writing to inform you that the Joint Committee for the Review of Administrative Rules (JCRAR) held a public hearing on January 28<sup>th</sup>, 1999. At that meeting, JCRAR received public testimony regarding **Emergency Rule Tax 2.39 & 2.395**, relating to the use of an alternative apportionment Wisconsin Administrative Code method.

The Joint Committee for the Review of Administrative Rules met in Executive Session on January 28<sup>th</sup>, 1999 and adopted the following motion:

Carried unanimously by voice vote, pursuant to §227.24(2)(a), *Stats.*, the Joint Committee for Review of Administrative Rules extend the effective date of **Tax 2.39 & 2.395** by 60 days, at the request of the Department of Revenue.

Ayes: (10) Senators Robson, Grobschmidt, Shibilski, Welch, and Darling;  
Representatives Grothman, Seratti, Gunderson, Kreuser, and Black

Noes: (0)

Absent: (0)

**Motion Carried: Extension Granted.**  
10 Ayes, 0 Noes, 0 Absent.



Pursuant to §227.24(2)(c), *Stats.*, we are notifying the Secretary of State and the Revisor of Statutes of the Committee's action through copies of this letter.

Sincerely,

Judith B. Robson  
State Senator  
15<sup>th</sup> Senate District

Glenn Grothman  
State Representative  
59<sup>th</sup> Assembly District

JBR:chmiv

cc: Secretary of State La Follette  
Revisor of Statutes Gary Poulson



**State of Wisconsin • DEPARTMENT OF REVENUE**

125 SOUTH WEBSTER STREET • P.O. BOX 8933 • MADISON, WI 53708-8933  
(608) 266-6466 • FAX (608) 266-5718 • <http://www.dor.state.wi.us>



*Tommy G. Thompson*  
Governor

*Cate Zeuske*  
Secretary of Revenue

January 13, 1999

Honorable Judy Robson  
Co-Chair, Joint Committee for Review  
of Administrative Rules  
Room 15 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

Honorable Glenn Grothman  
Co-Chair, Joint Committee for Review  
of Administrative Rules  
Room 15 North, State Capitol  
P.O. Box 8952  
Madison, WI 53708

Re: Request for 60-Day Extension Under s. 227.24(2)(a), Stats., of Emergency Rule Tax 2.39  
and 2.395

Dear Senator Robson and Representative Grothman:

To provide for additional time necessary to promulgate a permanent rule, I am requesting a 60-day extension of the emergency rule amending Tax 2.39 and creating Tax 2.395, relating to the use of an alternative apportionment method. This extension will help to prevent any lapse in coverage until the permanent rule becomes effective. This emergency rule expires February 26, 1999.

A permanent rule has been developed and has been reviewed by the Legislative Council Rules Clearinghouse. A public hearing was held December 28, 1998, on both the emergency and permanent rules. The permanent rule has been submitted for review by Legislative committees. However, since the permanent rule cannot be in place before the emergency rule expires, a 60-day extension of the emergency rule is necessary.

A copy of the initial Order of the Department of Revenue Adopting An Emergency Rule is attached, for your information. A brief analysis explaining the need for the rule follows.

**Analysis**

Statutory authority: s. 71.80(1)(c), Stats. (1995) and s. 71.25(14)(b), Stats., as created by 1997 Wis. Act 299

Statutes interpreted: s. 71.25(14), Stats.

Honorable Judy Robson  
Honorable Glenn Grothman  
Page Two

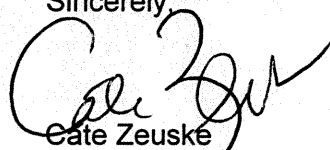
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A second note at the end of Tax 2.39(3) is created, to include a reference to Tax 2.395.

SECTION 2. Tax 2.395 is created, to address the use of an alternative apportionment method. This alternative was created by s. 2r, 1997 Wis. Act 299, effective for taxable years beginning on January 1, 1998.

Thank you for your consideration in this matter.

Sincerely,



Cate Zeuske  
Secretary of Revenue

CZ:MPW:cII

i:/rules/239 Emergency - Extension - JCRAR

Enclosure

ORDER OF THE DEPARTMENT OF REVENUE  
ADOPTING AN EMERGENCY RULE

The Wisconsin Department of Revenue hereby adopts an emergency rule interpreting s. 71.25(14), Stats., relating to the use of an alternative apportionment method.

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Analysis by the Department of Revenue

Statutory authority: s. 71.80(1)(c), Stats. (1995) and s. 71.25(14)(b), Stats., as created by 1997 Wis. Act 299

Statutes interpreted: s. 71.25(14), Stats.

SECTION 1. Tax 2.39(3)(a)(intro.) is amended, to exclude corporations that qualify for the use of an alternative apportionment method from the rule relating to the general apportionment method.

A second note at the end of Tax 2.39(3) is created, to include a reference to Tax 2.395.

SECTION 2. Tax 2.395 is created, to address the use of an alternative apportionment method. This alternative was created by s. 2r, 1997 Wis. Act 299, effective for taxable years beginning on January 1, 1998.

---

FINDING OF EMERGENCY

The Department of Revenue finds that an emergency exists and that the attached rule order is necessary for the immediate preservation of the public peace, health, safety or welfare. A statement of the facts constituting the emergency is:

Section 2r of 1997 Wis. Act 299 requires that the Department of Revenue prepare administrative rules specifying the procedure for a corporation to request the use of an alternative apportionment method, the circumstances under which the department may grant such a request and the alternative methods that the department may authorize under s. 71.25(14), Stats. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998. Corporations must request the use of an alternative method of apportionment on or before January 1, 2000.

This rule is therefore promulgated as an emergency rule and shall take effect upon publication in the official state newspaper. Certified copies of this rule have been filed with the Secretary of State and the Revisor of Statutes, as provided in s. 227.24, Stats.

---

SECTION 1. Tax 2.39(3)(a)(intro.) is amended to read:

Tax 2.39(3)(a)(intro.) For the reporting of income for the purposes of franchise or income taxation, all businesses except financial organizations and public utilities as defined in ss. 71.04(8) and 71.25(10), Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25(14), Stats., shall use an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. Property, payroll or sales related to the production of nonapportionable income described in s. 71.04(1) and (4) or 71.25(5)(b), Stats., may not be included in either the numerator or the denominator of any of the apportionment factors. If one of these factors is omitted pursuant to s. 71.04(10) or 71.25(11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

Note to Revisor: Insert the following note after the first note at the end of Tax 2.39(3):

Note: See s. Tax 2.395 for an alternative method of apportioning the income of certain corporations.

SECTION 2. Tax 2.395 is created to read:

Tax 2.395 ALTERNATIVE METHOD OF APPORTIONMENT. (1) DEFINITIONS. In this section:

(a) "Corporate restructuring" means the transfer by a corporation of all or part of its operations to one or more newly organized or existing subsidiaries in exchange for 100% of the subsidiary's stock. The corporation shall retain direct or indirect ownership of 100% of the subsidiary's stock. An existing subsidiary shall be eligible to participate in a corporate restructuring only if the subsidiary has been completely inactive in and outside this state since the date of its incorporation.

(b) "Corporation" means a corporation for profit that files an application under this rule and that is incorporated under ch. 180, Stats., or under the law of another state, the District of Columbia or a foreign country and is subject to tax under s. 71.23(1) or (2), Stats.

(c) "Subsidiary" means a corporation that will file an application under this rule with a corporation that directly or indirectly owns 100 % of the total value or share of all classes of its stock outstanding.

(d) "Unfair representation of the degree of business activity in this state" means that the sum of the Wisconsin tax liability of the corporation and its subsidiaries calculated under s. 71.25(6), Stats., exceeds 200% of the Wisconsin tax liability that the corporation would have computed if the corporation did not contribute business operations to one or more subsidiaries and results in at least \$2 million of additional Wisconsin tax liability.

Note: This definition applies only for purposes of s. 71.25(14), Stats.

(e) "Wisconsin tax liability" means the gross tax computed under s. 71.23(1) or (2), Stats.

(2) WHO MAY FILE AN APPLICATION. A corporation may file an application on or before January 1, 2000 to use an alternative method of apportionment if all of the following conditions are met:

(a) The corporation is not a financial organization as defined in s. 71.25(10)(a), Stats., a public utility as defined in s. 71.25(10)(b), Stats., or a tax-option corporation as defined in s. 71.34(2), Stats.

(b) The corporation is a party to a corporate restructuring that occurs after June 30, 1998 and before January 1, 2000.

(c) As a result of the corporate restructuring, the use of the allocation and separate accounting method or the apportionment method prescribed under s. 71.25(6), Stats., would

result in an unfair representation of the degree of business activity in this state, given the same level of sales, payroll and property for the corporation and its subsidiaries.

(3) CONTENT OF THE APPLICATION. The application shall set forth a complete statement of the facts and reasons relating to the request to use an alternative method of apportioning income to Wisconsin, including the following:

(a) The full name, address and federal employer identification number of the corporation applying for the change in apportionment method.

(b) The full name, address and federal employer identification number of the subsidiaries that are a party to the corporate restructuring. If this information is not available when the application is filed, it shall be provided to the department as an amendment to the application at least 60 days before a return using an alternative apportionment method is filed.

(c) The corporation's and the subsidiaries' taxable year. The subsidiaries shall have the same taxable year as the corporation.

(d) The taxable year for which the corporation wishes the change to become effective.

(e) A detailed description of the corporate structure and business operations before the corporate restructuring.

(f) A detailed description of the corporate structure and business operations after the corporate restructuring.

(g) The present allocation or apportionment method used in Wisconsin.

(h) A description of the alternative apportionment method requested.

(i) A complete and precise statement of the reasons for the modification requested, including why the present method does not fairly represent the activities of the corporation and its subsidiaries in Wisconsin.

(j) Calculations using data from the most recently filed tax return prior to enactment of s. 71.25(14), Stats., showing that the Wisconsin tax liability of the corporation and its subsidiaries using the current method of allocation or apportionment would result in an unfair representation of the degree of business activity in this state.

(k) Calculations using data from the most recently filed tax return prior to enactment of s. 71.25(14), Stats., showing that the Wisconsin tax liability of the corporation and its subsidiaries using the proposed alternative method of apportionment does not result in less Wisconsin franchise or income tax than the corporation would be liable for without restructuring.

(L) Any other information relevant to the application the department requires or the corporation believes may have a bearing on the department's decision about whether to grant the apportionment method requested.

(m) Whether the corporation is currently being audited by the department.

Note: The application shall be mailed to the following address: Administrator of the Division of Income, Sales and Excise Taxes, Wisconsin Department of Revenue, P.O. Box 8933, Madison, WI 53708-8933.

(4) ALTERNATIVE METHODS OF APPORTIONMENT. The department may authorize any one or a combination of the following alternative methods of apportionment:

(a) Excluding any one or more of the property, payroll and sales factors.

(b) Weighting the factors other than 50% sales, 25% property and 25% payroll.

(c) Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. For purposes of this paragraph:

1. A sale is allocated to the location where the customer receives the benefit of the service.
2. If the customer receives the benefit of the service in more than one state, the



gross receipts are includable in the numerator of the apportionment factor in proportion to the extent the recipient receives the benefit of the service in each state.

(d) Including one or more additional factors which will fairly represent the corporation's or the subsidiaries' business activity in this state.

(e) Allowing one method for apportioning the business income of the corporation and another method for apportioning the business income of a subsidiary.

(f) Allowing the corporation and one or more subsidiaries to compute their Wisconsin tax liability by adding together their apportionable income and apportionment factors, eliminating any intercompany transactions, computing the Wisconsin tax liability as though the group were one taxpayer and dividing the combined Wisconsin tax liability among the corporations based on their share of the group's Wisconsin business income.

(g) Allowing any other apportionment method that will fairly represent the corporation's and the subsidiaries' business activity in this state.

(5) REVIEW OF THE APPLICATION. The department shall review the information submitted and follow the procedure specified in s. 71.25(14)(c), Stats., before issuing a written decision regarding the use of an alternative method of apportionment. The corporation shall receive written approval before using the alternative method.

(6) YEARS FOR WHICH USE OF ALTERNATIVE METHOD OF APPORTIONMENT APPLIES. Once an alternative method of apportionment has been approved for a taxable year, the corporation shall use it for that taxable year and all subsequent taxable years, unless the department finds the use of the apportionment method prescribed in s. 71.25(6), Stats., no longer results in an unfair representation of the degree of business activity in this state as determined under par. (7)(b).

(7) REVOCATION OF USE OF ALTERNATIVE METHOD OF APPORTIONMENT. (a) If

the department upon audit or review finds that the use of the apportionment method prescribed in s. 71.25 (6), Stats., no longer results in an unfair representation of the degree of business activity in this state as determined under par. (b), the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25(6), Stats., for each taxable year in which an alternative apportionment method was used and an unfair representation was not found to exist.

(b) In determining whether an unfair representation of the degree of business activity continues to exist, the department will look for a continued substantial amount of difference between the tax liability calculated pursuant to s. 71.25(6), Stats., and the tax liability had the restructuring not taken place. The department shall also consider any additional information the corporation has submitted pursuant to sub.(8).

(c) If the department finds for a period of at least three consecutive taxable years that a substantial difference in tax liability as determined in par. (b) no longer exists, the corporation may no longer use the approved alternative apportionment method.

(d) If the department terminates the approved alternative apportionment method, the corporation may request and the department shall resubmit the proposed alternative method of apportionment to the co-chairpersons of the joint committee for review of administrative rules pursuant to s. 71.25(14)(c), Stats.

(8) FILING OF RETURN. For each taxable year, the corporation and its subsidiaries shall file with their Wisconsin corporate franchise or income tax returns schedules setting forth the calculations required under sub.(6), as well as a calculation of the tax liability of the corporation and its subsidiaries under s. 71.25(6), Stats. The corporation and its subsidiaries shall attach a copy of the department's approval to use an alternative apportionment method to the front of each return filed. The corporation may also include additional explanatory material

relative to its business activity. The returns shall be filed with the audit bureau of the department of revenue.

Note: The address for mailing the returns is: Audit Bureau, Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708-8906.

(9) CONFIDENTIALITY. All documents related to a request for an alternative method of apportionment shall be subject to the confidentiality provisions of s. 71.78, Stats.

Note: Section Tax 2.395 interprets s. 71.25(14), Stats.

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The rules contained in this order shall take effect upon publication in the official state newspaper as provided in s. 227.22(2)(c), Stats.

DEPARTMENT OF REVENUE

Dated: September 25 1998

By: Cate Zeuske  
Cate Zeuske  
Secretary of Revenue

TAX2395R1

hearing and publication requirements if preservation of the public peace, health, safety or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the general procedures.

### **Alternative Apportionment of Income**

The rule specifies that certain corporations that are party to a restructuring that results in an unfair representation of business activities in the state may apply for an alternative apportionment method and specifies the required content of the application.

The rule defines an unfair representation of business activity as combined net tax liability of the parent corporation and subsidiaries that exceeds 200% of the net tax liability that the parent corporation would have computed if it had not contributed business operations to the subsidiaries and that results in at least \$2 million of additional tax liability.

Under the rule, the Department may authorize the following alternative methods of apportionment:

1. Excluding one or more of the property, payroll or sales factors.
2. Weighting the factors differently (generally factors are weighted as 50% sales, 25% payroll and 25% property).
3. Defining Wisconsin sales in the apportionment factor in a different manner.
4. Including one or more additional factors.
5. Allowing different methods of apportionment for the parent and subsidiary corporations.
6. Allowing a parent and subsidiary corporations to compute net tax liability as though the group were one taxpayer by adding apportionable income and factors and eliminating intercompany transactions.

The rule specifies that once granted, the alternative apportionment method continues in subsequent years until revoked. The Department may retroactively revoke the use of the alternative method if use of the general apportionment method does not result in unfair representation of business activity in the state. Upon revocation, a corporation would have to reapply and receive Department approval before using an alternative apportionment method in subsequent years.

### **Fiscal Effect**

The fiscal effect of the alternative apportionment methods prescribed by this rule is unknown because the number of corporations utilizing these methods and the effect of the alternative methods on their tax liability cannot be known. The determination to grant an alternative apportionment method is based on projections of income of restructured corporations. Since actual income may differ from what is projected, the tax effect of an alternative apportionment method may differ from that expected at the time the alternative method was sought. Further, the change in a corporation's apportionment ratio could either raise or lower its tax. For these reasons, the fiscal effect could be positive or negative in any given year. Discussions with other states that have similar provisions indicate that corporations seek changes in apportionment ratio in limited instances, which implies a small fiscal effect. However, apportionment ratio changes can have a substantial effect on a corporation's tax liability, so that the change in any year could be significant.

4EB 7/31/98

**EMERGENCY RULE****1997 Session****FISCAL ESTIMATE  
DOA-2048 N(R10/94)**☒ ORIGINAL  
☐ CORRECTED☐ UPDATED  
☐ SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

TAX 2.39 and 2.395

Amendment No. if Applicable

Subject

Alternative Apportionment Method

Fiscal Effect

**Unknown**State: ☐ No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- |  |   |
|--|---|
| <input type="checkbox"/> Increase Existing Appropriation | <input type="checkbox"/> Increase Existing Revenues |
| <input type="checkbox"/> Decrease Existing Appropriation | <input type="checkbox"/> Decrease Existing Revenues |
| <input type="checkbox"/> Create New Appropriation        |   |

☐ Increase Costs - May be Possible to Absorb  
Within Agency's Budget ☐ Yes ☐ No☐ Decrease CostsLocal: ☐ No Local Government Costs1. ☐ Increase Costs  
☐ Permissive ☐ Mandatory2. ☐ Decrease Costs  
☐ Permissive ☐ Mandatory3. ☐ Increase Revenues  
☐ Permissive ☐ Mandatory4. ☐ Decrease Revenues  
☐ Permissive ☐ Mandatory

5. Types of Local Governmental Units Affected:

- |   |   |                                 |
|---|---|---------------------------------|
| <input type="checkbox"/> Towns            | <input type="checkbox"/> Villages       | <input type="checkbox"/> Cities |
| <input type="checkbox"/> Counties         | <input type="checkbox"/> Others         |                                 |
| <input type="checkbox"/> School Districts | <input type="checkbox"/> WTCS Districts |                                 |

Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

Under provisions of 1997 Wisconsin Act 299, corporations may request, and the Department may approve, an alternative method of apportionment of income in the event of a corporate restructuring that would result in unfair representation of the degree of business activity in the state. The alternative method may not result in less franchise or income tax revenue to the state than the current corporate structure is liable for, given the same overall level of sales, payroll and property.

Before granting a request for alternative apportionment, Act 299 requires the Department to promulgate rules specifying the circumstances in which alternative apportionment may be granted and the kinds of alternatives that may be authorized. The allowance of an alternative apportionment method takes effect for taxable years beginning on January 1, 1998, and corporations must request use of an alternative method on or before January 1, 2000.

This emergency rule is being promulgated because a rule promulgated following regular procedures might not be in place in time for some corporations to obtain approval of an alternative apportionment method for tax year 1998 returns. An agency may promulgate a rule as an emergency rule without complying with the notice,

(continued on page two)

Long-Range Fiscal Implications

Agency/Prepared by: (Name &amp; Phone No.)

Wisconsin Department of Revenue

Pamela Walgren, (608) 266-7817

Authorized Signature/Telephone No.

Yeang-Eng Braun

(608) 266-2700

*Yeang Eng Braun*

Date

7/31/98

# EMERGENCY RULE

1997 Session

**FISCAL ESTIMATE WORKSHEET**  
Detailed Estimate of Annual Fiscal Effect  
DOA-2047(R10/94)

☒ ORIGINAL    ☐ UPDATED  
☐ CORRECTED    ☐ SUPPLEMENTAL

LRB OR Bill No.	Adm. Rule No.	Amendment No.
TAX 2.39 and 2.395		

**Subject**

Alternative Apportionment Method

**I. One-Time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**

II. Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
	Increased Costs	Decreased Costs
<b>A. State Costs by Category</b>		
State Operations - Salaries and Fringe	\$	\$ -
(FTE Position Changes)	( FTE)	( FTE)
State Operations-Other Costs		-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	\$	\$ -
<b>B. State Costs by Source of Funds</b>		
GPR	\$	\$ -
FED	\$	-
PRO/PRS	\$	-